

ESTTA Tracking number: **ESTTA239850**

Filing date: **09/30/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049992
Party	Plaintiff BLUE AMBROSIA, INC.
Correspondence Address	Todd M. Lander EZRA BRUTZKUS GUBNER LLP 21650 Oxnard St.Suite 500 Woodland Hills, CA 91401 UNITED STATES tlander@ebg-law.com, sdressler@ebg-law.com, jhenry@ebg-law.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Todd M. Lander
Filer's e-mail	tlander@ebg-law.com, mbrutzkus@ebg-law.com, srobbins@ebg-law.com, jhenry@ebg-law.com
Signature	/todd m. lander/
Date	09/30/2008
Attachments	92049992.pdf ( 66 pages )(3795617 bytes )

1 Mark D. Brutzkus  
Todd M. Lander  
2 **EZRA | BRUTZKUS | GUBNER LLP**  
21650 Oxnard Street, Suite 500  
3 Woodland Hills, California 91367  
Telephone: (818) 827-9000  
4 Fax: (818) 827-9099  
e-mail: [mbrutzkus@ebg-law.com](mailto:mbrutzkus@ebg-law.com)  
5 [tlander@ebg-law.com](mailto:tlander@ebg-law.com)

6 Attorneys for Petitioner  
Blue Ambrosia, Inc.  
7

8 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
9 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

10 In the Matter of Trademark Registration No. 3170714  
For the Mark: Logo Design Reflected on Registration Certificate  
11

12 BLUE AMBROSIA, INC.,  
13 a California corporation  
14 Petitioner,  
15 v.  
16 SIWY DENIM OF AMERICA,  
17 LLC,  
18 Registrant.

TTAB Cancellation No. 92049992

**NOTICE OF MOTION AND  
MOTION TO SUSPEND  
PROCEEDINGS PENDING  
RESOLUTION OF ONGOING  
CIVIL ACTION BETWEEN THE  
PARTIES**

[37 C.F.R. §2.117(a) and §510.02(a) of  
the TTAB Manual of Procedure]

19  
20 **NOTICE OF MOTION AND MOTION TO SUSPEND**

21 PLEASE TAKE NOTICE that Petitioner Blue Ambrosia, Inc. hereby moves  
22 the Board for an order suspending the above proceedings pending termination of a  
23 civil action involving the parties to this cancellation petition (the "Civil Action").  
24 That Civil Action, entitled *Siwy Denim of America, LLC v. Blue Ambrosia, Inc. et*  
25 *al.*, is pending in the United States District Court for the Central District of  
26 California, Case No. CV 08-5545 SJO (AGRx). The claims and disputes raised in  
27 the Civil Action are substantially similar to those placed in issue by the Petition to  
28 Cancel here, and indeed directly relate to the viability of the trademark that is the

1 subject of these proceedings. Accordingly, pursuant to Rule 2.117(a) of the  
2 Trademark Rules of Practice (37 C.F.R. § 2.117(a)) and Section 510.02(a) of  
3 TTAB Manuel of Procedure, Petitioner hereby requests that these Proceedings be  
4 suspended until the Civil Action is terminated.

5 In support of this Motion, Petitioner submits the following exhibits:

6 1. Exhibit 1, consisting of a true and correct copy of the  
7 Complaint that Siwy Denim of America, LLC – the registrant of trademark  
8 registration no. 3170714 (the “Mark”) – filed in the Civil Action, claiming  
9 infringement of the Mark;

10 2. Exhibit 2, a true and correct copy of the Petitioner’s answer to the  
11 Complaint in the Civil Action; and

12 3. Exhibit 3, a true and correct copy of a counterclaim Petitioner filed in  
13 the Civil Action seeking, among other things, cancellation of the Mark.

14 For these reasons, Petitioner respectfully submits that these proceedings  
15 should be suspended until the Civil Action is terminated.

16  
17 Dated: September 30, 2008

EZRA BRUTZKUS GUBNER, LLP

18  
19 By:   
20 Mark D. Brutzkus  
21 Todd M. Lander  
22 Attorneys for Petitioner  
23 Blue Ambrosia, Inc.  
24  
25  
26  
27  
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

3 I am employed in the County of Los Angeles, State of California. I am over  
4 the age of 18 and not a party to the within action; my business address is 21650  
5 Oxnard Street, Suite 500, Woodland Hills, California 91367, Telephone: 818-827-  
9000, Facsimile: 818-827-9099.

6 On September 30, 2008, I served the foregoing document described as  
7 **NOTICE OF MOTION AND MOTION TO SUSPEND PROCEEDINGS**  
8 **PENDING RESOLUTION OF ONGOING CIVIL ACTION BETWEEN THE**  
9 **PARTIES** on the interested parties in this action by placing a true copy thereof  
enclosed in sealed envelope(s) addressed as follows:

10 *SEE ATTACHED SERVICE LIST*

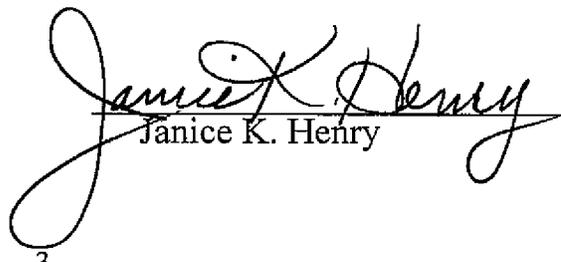
11  **(BY MAIL)** I caused such envelope with postage thereon fully prepaid to be  
12 placed in the U.S. mail at Woodland Hills, California. I am "readily  
13 familiar" with the firm's practice of collection and processing  
14 correspondence for mailing. It is deposited with U.S. Postal Service on that  
same day in the ordinary course of business. I am aware that on motion of a  
party served, service is presumed invalid if postal cancellation date or  
postage meter date is more than one day after date of deposit for mailing in  
affidavit.

15  **(BY PERSONAL DELIVERY)** I caused such envelope to be delivered by  
hand by [Name and address of courier service], to the office of the  
addressee(s) noted on the attached Service List.

16  **(BY FACSIMILE TRANSMISSION)** I caused such document to be  
17 transmitted to the addressee(s) facsimile number noted above. The facsimile  
18 machine I used complied with CRC Rule 2003(3) and the transmission was  
19 reported as complete and without error. Pursuant to CRC Rule 2008(4), I  
caused the machine to print a transmission record of the facsimile  
transmission.

20  **(BY FEDEX / OVERNITE EXPRESS)** I caused such envelope to be  
21 deposited at the FedEx / Overnight Express drop box at Woodland Hills,  
22 California. I am "readily familiar" with the firm's practice of collection and  
processing correspondence for mailing. It is deposited with FedEx /  
Overnite Express that same day in the ordinary course of business.

23 Executed on September 30, 2008, at Woodland Hills, California, I declare  
24 under penalty of perjury under the laws of the State of California that the above is  
25 true and correct and, that I am employed in the office of a member of the bar of  
this court at whose direction the service was made.

26   
27 Janice K. Henry  
28

**SERVICE LIST**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Christopher Q. Pham Gareeb Pham LLP 707 Wilshire Boulevard, Suite 5300 Los Angeles, CA 90017 T: (213) 455-2930 F: (213) 455-2940	<u>Attorney for Registrant</u> Siwy Denim of America, LLC
Siwy Denim of America, LLC 10 W. Juniper Lane Cleveland, OH 44022	

# **EXHIBIT 1**

FILED

2008 AUG 22 PM 3:44

COURT REPORTER  
CLERK OF COURT  
CLERK OF COURT

BY \_\_\_\_\_

1 Christopher Q. Pham, Bar No.: 206697  
2 Sumithra Rao, Bar No.: 256078  
3 GAREEB I PHAM, LLP  
4 707 Wilshire Boulevard, Suite 5300  
5 Los Angeles, CA 90017  
6 Tel: (213) 455-2930 Fax: (213) 455-2940  
7 Email: cpham@gareebpham.com  
8 Email: srao@gareebpham.com

9 Attorneys for Plaintiff  
10 SIWY DENIM OF AMERICA, LLC

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 SIWY DENIM OF AMERICA, LLC, an  
14 Ohio Limited Liability Company,

15 Plaintiff,

16 vs.

17 CHARLOTTE RUSSE HOLDING, INC., a  
18 Delaware Corporation; BLUE AMBROSIA,  
19 INC., a California Corporation and Does 1-  
20 10.

21 Defendants.

Case No. **CV08-05545 SJO (AGR)**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF :**

- (1) FEDERAL TRADEMARK INFRINGEMENT [15 U.S.C. § 1114/Lanham Act § 43(a)]
- (2) FEDERAL TRADEMARK DILUTION [15 U.S.C. §1125(e)]
- (3) FALSE DESIGNATION OF ORIGIN [15 U.S.C. §1125(a)];
- (4) STATE COMMON LAW TRADEMARK INFRINGEMENT
- (5) UNFAIR BUSINESS PRACTICES [Cal. Bus. & Prof. Code §17200 et seq.]
- (6) UNJUST ENRICHMENT
- (7) DECLARATORY RELIEF

22 COMES NOW, Plaintiff SIWY DENIM OF AMERICA, LLC, (hereinafter  
23 "SIWY DENIM") hereby files its Complaint against Defendants CHARLOTTE  
24 RUSSE HOLDING, INC. ("CHARLOTTE RUSSE"), BLUE AMBROSIA, INC.  
25 ("BLUE AMBROSIA"), and Does 1-10, inclusive (collectively "Defendants").

26 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**JURISDICTIONAL ALLEGATIONS**

1. This Court has Federal subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), by virtue of 15 U.S.C. §1051 *et seq.*, in that the case arises out of §43(a) of the *Lanham Act* for trademark infringement, and supplemental jurisdiction under 28 U.S.C. §§ 1367(a) and 1338 (a)(b).

2. Venue is proper, *inter alia*, under 28 U.S.C. § 1391(b)(2) because on information and belief, a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. Additionally, on information and belief, venue is proper under 28 U.S.C. § 1391 (b)(3) against Defendant BLUE AMBROSIA, who is subject to personal jurisdiction in the Central District of California, as BLUE AMBROSIA is incorporated in the state of California, with its principal place of business in Los Angeles, California. Venue is also proper in the Central District of California as CHARLOTTE RUSSE operates several retail stores in Los Angeles, California.

3. Personal jurisdiction exists over Defendants because on information and belief, Defendants marketed, designed, manufactured, distributed, and/or sold the infringing products at numerous retail stores and business centers within the state of California and in this judicial district, and purposely availed themselves of the privileges and protections of the laws of the State of California, such that this Court's assertion of jurisdiction over Defendants does not offend traditional notions of fair play and due process.

24  
25  
26  
27  
28

**THE PARTIES**

4. SIWY DENIM is now, and was at the time of the filing of this Complaint and at all intervening times, an Ohio limited liability company, duly authorized and licensed to conduct business in Ohio, with its principal place of business in Ohio.

1           5.     SIWY DENIM designs, manufactures and distributes denim women's  
2 apparel under the brand name "Siwy Denim."

3           6.     Plaintiff is informed and believes that Defendant CHARLOTTE  
4 RUSSE HOLDING, INC., is now, and was at the time of the filing of this  
5 Complaint and at all intervening times, a corporation duly organized and operating  
6 under the laws of the state of Delaware, with a principal place of business located  
7 at 4645 Morena Boulevard, San Diego, California 92117.

8           7.     Plaintiff is informed and believes that Defendant BLUE AMBROSIA,  
9 INC. is now, and was at the time of the filing of this Complaint and at all  
10 intervening times, a corporation duly organized and operating under the laws of the  
11 state of California, with a principal place of business located at 2881 Pico  
12 Boulevard, Los Angeles, California 90023.

13           8.     The true names and capacities, whether individual, corporate,  
14 associate or otherwise, of Defendants herein designated by fictitious names Does  
15 1-10, inclusive, are unknown to Plaintiff. Plaintiff therefore sues said Defendants  
16 by such fictitious names. When the true names and capacities of said Defendants  
17 have been ascertained, Plaintiff will amend this pleading accordingly.

18           9.     Plaintiff further alleges that Does 1-10, inclusive, sued herein by  
19 fictitious names are jointly, severally and concurrently liable and responsible with  
20 the named Defendants upon the causes of action hereinafter set forth.

21           10.    Plaintiff is informed and believes and thereon alleges that at all times  
22 mentioned herein Defendants CHARLOTTE RUSSE HOLDING, INC., BLUE  
23 AMBROSIA, INC. and Does 1-10, inclusive, and each of them (collectively,  
24 "Defendants"), were the agents, servants and employees of every other Defendant  
25 and the acts of each Defendant, as alleged herein, were performed within the  
26 course and scope of that agency, service or employment.

27 ///

28

1 INJURY TO PLAINTIFFS

2 11. SIWY DENIM owns eleven (11) trademarks in the SIWI DENIM  
3 logo and designs (hereinafter "the Mark") internationally and in the United States.  
4 (See Exhibit A).

5 12. Plaintiff owns registered United States trademarks for the "SIWY"  
6 stylized logo, the "SIWY" typed name, and the related "pocket design mark",  
7 (collectively "the Stylized Design"), all of which appear on each and every denim  
8 product manufactured and distributed by SIWY DENIM. The logo and  
9 corresponding artwork are registered under U.S. Reg. No. 3,267,811, registered  
10 July 24, 2007; U.S. Reg. No. 3, 267, 810, registered July 24, 2007; and U.S. Reg.  
11 No. 3,170, 714, registered November 14, 2006.

12 13. Plaintiff designs, develops, manufactures, markets, distributes and  
13 sells denim jeans and other apparel, including skirts and shorts, for women in the  
14 United States, Canada, United Kingdom, Belgium, Switzerland, Austria, China,  
15 Japan, South Korea, Taiwan, and Australia. Plaintiff has been designing,  
16 manufacturing, distributing and selling its apparel under the Mark since the Spring  
17 of 2005. Siwy Denim apparel and their packaging prominently bear the SIWY  
18 DENIM Stylized Design. SIWY DENIM'S Stylized Design has been continually  
19 used in commerce since its spring 2005 launch.

20 14. Since Spring of 2005, Plaintiff has continuously and extensively  
21 promoted, advertised, displayed, offered for sale and sold its jeans prominently  
22 bearing the Mark and Stylized Design.

23 15. Due to Plaintiff's extensive use of the Mark, as well as through  
24 substantial financial investment and effort, Plaintiff has built up significant  
25 goodwill and a reputation for the highest quality clothing products as a leader in  
26 the high-end denim market, contributing significantly to the wide interest in  
27 designer denim. Plaintiff's Mark and Stylized Design have become well-known in  
28

1 the industry, as evidenced by numerous articles and other media attention  
2 recognizing the Mark and Stylized Design as the indicator of source of SIWY  
3 DENIM apparel, including features in magazines such as *In Touch*, *Cosmopolitan*,  
4 *Harper's Bazaar*, *Lucky*, *Elle*, *Glamour*, *Marie Claire*, *Vogue*, *Teen Vogue*,  
5 *People*, *US* and *In Style*. In the United States, the collection retails at Neiman  
6 Marcus, Saks Fifth Avenue, Fred Segal, Ron Herman, Forty Five Ten, Hollywood  
7 Trading Company, and Intermix to name a few, as well as several online retailers  
8 specializing in celebrity style and the newest trends.

9 16. Retailers, catalogs, and online retailers typically display SIWY  
10 DENIM apparel with the Stylized Design on the rear pockets prominently visible  
11 to the customer.

12 17. The SIWY DENIM Stylized Design constitutes an enforceable  
13 trademark that uniquely identifies garments bearing that mark as emanating from  
14 or sponsored or licensed by SIWY DENIM. As a result of the widespread use and  
15 display of the Stylized Design as a trademark identifying SIWY DENIM products,  
16 1) the public and the trade have come to recognize SIWY DENIM apparel bearing  
17 the Stylized Design as emanating from SIWY DENIM, 2) the public and the trade  
18 recognize that the SIWY DENIM apparel bearing the Stylized design constitute  
19 high quality garments emanating from a single source, and 3) the Stylized Design  
20 trademark has established a strong secondary meaning and extensive goodwill.

21 18. Upon information and belief, in or around 2006, the exact date being  
22 unknown to SIWY DENIM but well known to Defendant, Defendant BLUE  
23 AMBROSIA, without permission, authorization or license from SIWY DENIM,  
24 manufactured and offered for sale an unknown number of the infringing denim  
25 jeans.

26 19. Upon information and belief, in or around 2006, the exact date being  
27 unknown to Plaintiff, Defendants started producing, advertising, and selling the  
28

1 denim jeans ("Infringing Jeans") prominently featuring a graphical design on the  
2 rear pockets that is the same as or substantially and confusingly similar to the  
3 Stylized Design mark.

4 20. Upon information and belief, on or about the fall of 2006, Defendant  
5 BLUE AMBROSLA sold to and delivered to Defendant CHARLOTTE RUSSE  
6 HOLDING, INC.'s distribution center in Ontario, California more than 10,000  
7 pairs of the Infringing Jeans.

8 21. Upon information and belief, Defendant CHARLOTTE RUSSE  
9 HOLDING, INC. offered for sale and actually sold over 10,000 pairs of the  
10 Infringing Jeans in its retail stores across the country. A true and correct copy of a  
11 photograph taken of a pair of the Infringing Jean from one of Defendant's retail  
12 stores is attached hereto as Exhibit B.

13 22. Defendants' production, distribution, marketing and sale of the  
14 Infringing Jeans is likely to, and has in fact caused, confusion, mistake or  
15 deception as to the source or origin of the Infringing Jeans, in that the trade and the  
16 public at large are likely to believe that the Infringing Jeans featuring plaintiff's  
17 Stylized Design emanate from or are authorized, sponsored or approved by  
18 Plaintiff, or are otherwise affiliated or connected with and are of the same high  
19 quality and desirability as SIWI DENIM's products.

20 23. On December 19, 2006, SIWY DENIM sent a cease and desist letter  
21 to Defendant CHARLOTTE RUSSE HOLDING, INC. demanding that Defendant  
22 identify all sales and distribution of all clothing using its confusingly similar  
23 design, including via the Internet. A true and correct copy of this letter is attached  
24 hereto, as Exhibit C.

25 24. On January 8, 2007, counsel for Defendant CHARLOTTE RUSSE  
26 HOLDING, INC., responded with a letter stating that it needed more information  
27 from SIWY DENIM to determine who its vendor was so that it could contact the  
28

1 vendor of the infringing product and demand that the vendor assume its contractual  
2 and legal obligations. A true and correct copy of this letter is attached hereto, as  
3 Exhibit D.

4 25. On May 17, 2007, SIWY DENIM sent a demand letter to both  
5 Defendants demanding that they provide the sales prices the Infringing Jeans sold  
6 to CHARLOTTE RUSSE HOLDING, INC. by BLUE AMBROSIA, provide the  
7 name and contact information of BLUE AMBROSIA's vendor that provided it  
8 with the infringing design or made the Infringing Jean for BLUE AMBROSIA.  
9 SIWY DENIM additionally requested sales information relating to the retail sale of  
10 such jeans by Charlotte Russe. A true and correct copy of this letter is attached  
11 hereto, as Exhibit E.

12 26. To date, Defendants have not fully provided SIWY DENIM with firm  
13 responses to SIWY DENIM'S lawful demands.

14 27. Upon information and belief, Defendants' use of SIWY DENIM'S  
15 Stylized Design through the creation and/or sale of inferior quality clothing bearing  
16 the Stylized Design was willful, having been adopted with knowledge of SIWY  
17 DENIM'S prior rights in and to the Mark, with the intent to trade on and benefit  
18 from the goodwill established by Plaintiff in its Mark.

19 **FIRST CAUSE OF ACTION**

20 **(Infringement of Federally Registered Mark Against Defendants**  
21 **CHARLOTTE RUSSE HOLDING, INC., BLUE AMBROSIA, INC., and**  
22 **Does 1-10, Inclusive)**

23 **[15 U.S.C. § 1114/Lanham Act §43(a)]**

24 28. SIWI DENIM repeats and re-alleges every allegation set forth in  
25 Paragraphs 1-29 above.

26 29. When Defendants' began infringing SIWY DENIM's Stylized Design  
27 mark, Defendants had actual knowledge that Plaintiff is the registered trademark  
28

1 holder of the Stylized Design. Further, Plaintiff's registrations on the Principal  
2 Register give constructive notice of Plaintiff's ownership rights. Therefore,  
3 Defendants' actions were willful and make this case exceptional under 15 U.S.C.  
4 §1117(a).

5 30. Defendants produced, distributed, marketed and sold the Infringing  
6 Jeans in interstate commerce in such a manner as to create a likelihood of  
7 confusion, mistake, or deception among actual and prospective consumers and said  
8 acts have damaged, impaired, and diluted the goodwill associated with SIWY  
9 DENIM's protected Stylized Design mark, to SIWY DENIM's immediate and  
10 irreparable damage.

11 31. Defendants' unauthorized production, distribution, marketing and sale  
12 of the Infringing Jeans in the manner alleged constitutes trademark infringement  
13 within the meaning of 15 U.S.C. § 1114(1) (a).

14 32. Defendant has maliciously, willfully, and deliberately engaged in the  
15 aforesaid acts with intent to injure Plaintiff and to deceive the public.

16 33. Defendant(s)' acts of infringement have caused Plaintiff irreparable  
17 injury and loss of reputation. Unless enjoined by this Court, Defendant could  
18 continue these acts of infringement to Plaintiff's immediate and irreparable  
19 damage.

20 **SECOND CAUSE OF ACTION**

21 **(Trademark Dilution Against Defendants CHARLOTTE RUSSE HOLDING,**  
22 **INC., BLUE AMBROSIA, INC., and Does 1-10, Inclusive)**

23 **[15 U.S.C. § 1125(c)]**

24 34. SIWY DENIM repeats and re-alleges the allegations in Paragraphs 1-  
25 33.

26 35. Based on the inherent distinctiveness of the SIWY DENIM Stylized  
27 Design mark in connection with the SIWY DENIM high-end brand of denim  
28

1 apparel, SIWY DENIM's Stylized Design mark has become famous pursuant to 15  
2 U.S.C. §1125(c).

3 36. Defendants have made commercial use of the Infringing Jeans with  
4 the willful intent to trade on Plaintiff's reputation or to cause dilution of the  
5 famous SIWY DENIM Stylized Design mark.

6 37. Defendants' unauthorized use of the aforesaid names and marks began  
7 long after the SIWY DENIM Stylized Design mark became well known and  
8 famous.

9 38. Defendants' use of the Infringing Jeans causes dilution of the  
10 distinctive quality of SIWY DENIM's Stylized Design mark.

11 39. Defendants' use of the Infringing Jeans lessens the capacity of SIWY  
12 DENIM's Stylized Design mark to identify and distinguish its goods from those  
13 goods of inferior quality.

14 40. Defendants' actions complained of herein constitute trademark  
15 dilution within the meaning of 15 U.S.C. § 1125(c).

16 41. Defendants' conduct has caused SIWY DENIM irreparable injury,  
17 loss of reputation and pecuniary damages. Defendant has no adequate remedy at  
18 law and, unless enjoined by this court, Defendant could continue to dilute SIWY  
19 DENIM's Stylized Design mark to the immediate and irreparable damage of SIWY  
20 DENIM.

21 **THIRD CAUSE OF ACTION**

22 **(Federal Unfair Competition and False Designation of Origin Against**  
23 **Defendants CHARLOTTE RUSSE HOLDING, INC., BLUE AMBROSIA,**  
24 **INC., and Does 1-10, Inclusive)**

25 **[15 U.S.C. § 1125(a)]**

26 42. Plaintiff repeats and re-alleges every allegation set forth in Paragraphs  
27 1-41.

28

1 43. Defendants' use of the Infringing Jeans constitutes unfair competition  
2 and a false designation of origin that is likely to cause confusion, mistake or  
3 deception of consumers as to the source of origin or sponsorship of Defendants and  
4 Defendants' Infringing Jeans, in violation of §43(a) of the Lanham Act.

5 Consumers are subject to confusion and are likely to purchase Defendants'  
6 Infringing Jeans falsely believing that Defendants and Defendants' Infringing  
7 Jeans are affiliated, connected, or associated with SIWY DENIM, or falsely  
8 believing that Defendants and Defendants' Infringing Jeans originate from, or are  
9 sponsored or approved by SIWY DENIM, when they are in fact not.

10 44. SIWY DENIM had no control over the nature and quality of  
11 Defendants' products. The failure, neglect and/or default by Defendants in  
12 providing high quality products has adversely reflected on SIWY DENIM as the  
13 believed source of origin of the jeans.

14 45. As a result of Defendants' actions, the goodwill in SIWY DENIM  
15 marks has been irreparably harmed, and SIWY DENIM has suffered pecuniary  
16 injuries and loss of reputation as a result. SIWY DENIM has no adequate remedy  
17 at law and, unless enjoined by this court, Defendant could continue to commit the  
18 aforesaid acts of infringement and dilution of SIWY DENIM's Stylized Design  
19 mark to the immediate and irreparable damage of SIWY DENIM.

20 46. Defendants' false representation and designation was committed with  
21 full knowledge of SIWY DENIM's rights, entitling SIWY DENIM to an award of  
22 Defendants' profits, up to three times SIWY DENIM's actual damages, and SIWY  
23 DENIM's attorneys' fees and costs in bringing and maintaining this action,  
24 pursuant to 15 U.S.C. §1117(a).

25 ///

26 ///

27 ///

28



1 infringement and unfair competition under the common law of the state of  
2 California.

3 52. By infringing SIWY DENIM's trademark rights, Defendants have and  
4 are improperly trading upon SIWY DENIM's enviable reputation and goodwill  
5 and are impairing SIWY DENIM's valuable rights in and to its Stylized Design  
6 mark.

7 53. The activities of Defendants complained of herein constitute willful  
8 and intentional acts of infringement of SIWY DENIM's trademark rights and  
9 unfair competition.

10 54. SIWY DENIM has no adequate remedy at law. The conduct of  
11 Defendants has caused, and if not enjoined will continue to cause, irreparable  
12 damage to SIWY DENIM's rights in its Stylized Design mark and to SIWY  
13 DENIM's business, reputation, and goodwill.

14 **FIFTH CAUSE OF ACTION**

15 **(Unlawful, Unfair, Fraudulent Business Practices Against Defendants**  
16 **CHARLOTTE RUSSE HOLDING, INC., BLUE AMBROSIA, INC.,**  
17 **and Does 1-10, Inclusive)**

18 *[California Business & Professions Code § 17200 et seq.]*

19 55. Plaintiff repeats and re-alleges each and every allegation set forth in  
20 paragraphs 1-54.

21 56. Defendants have committed all of the aforesaid acts of infringement  
22 deliberately, willfully, maliciously and oppressively, without regard to SIWY  
23 DENIM's legal, contractual, and exclusive proprietary rights.

24 57. Defendants' acts and practices as detailed above constitute acts of un  
25 unlawful, unfair or fraudulent business acts and practices within the meaning of  
26 *California Business & Professions Code §17200.*

27  
28

1 58. By such actions in infringing SIWY DENIM's Stylized Design mark.  
2 Defendants are improperly trading upon the enviable reputations and goodwill of  
3 SIWY DENIM and are impairing SIWY DENIM's valuable rights in and to the  
4 trademark. Defendants have engaged in transactions that are in violation of  
5 numerous provisions of California law. Strict liability may be applied even if  
6 Defendants' acts have violated only one of the three provisions set forth above.

7 59. SIWY DENIM has no adequate remedy at law. Therefore, pursuant  
8 to *California Business & Professions Code* §17203, SIWY DENIM seeks an order  
9 from this Court prohibiting Defendants from engaging or continuing to engage in  
10 the unlawful, unfair, or fraudulent business acts or practices set forth in this  
11 Complaint and/or ordering that Defendants perform their obligations under the law  
12 and cancel any illegal obligations.

13 60. SIWY DENIM additionally requests an order from this Court  
14 requiring that Defendants disgorge profits and return or pay to SIWY DENIM all  
15 of Defendants' ill-gotten gains obtained from the illegal transactions, and/or pay  
16 restitution, including the amount of monies that should have been paid if  
17 Defendants complied with their legal obligations, or, as equity requires.

18 61. SIWY DENIM further requests a court order an asset freeze or  
19 constructive trust be imposed over all monies in Defendants' possession which  
20 rightfully belong to SIWY DENIM.

21 **SIXTH CAUSE OF ACTION**

22 **(Unjust Enrichment Against Defendants CHARLOTTE RUSSE HOLDING,**  
23 **INC., BLUE AMBROSIA, INC., and Does 1-10, Inclusive)**

24 62. SIWY DENIM repeats and re-alleges each and every allegation set  
25 forth in paragraphs 1-61.

26 63. By virtue of the egregious and illegal acts of Defendants as described  
27 above, Defendants have been unjustly enriched in an amount to proven at trial.  
28

1 64. Defendants' retention of monies gained through its deceptive business  
2 practices, infringements, acts of counterfeit and otherwise would serve to unjustly  
3 enrich Defendants and would be contrary to the interests of justice.

4 **SEVENTH CAUSE OF ACTION**

5 **(Declaratory Relief Against Defendants CHARLOTTE RUSSE HOLDING,**  
6 **INC., BLUE AMBROSIA, INC., and Does 1-10, Inclusive)**

7 65. SIWY DENIM repeats and re-alleges each and every allegation set  
8 forth in paragraphs 1-64.

9 66. Actual controversies have arisen and now exist between SIWY  
10 DENIM, on one hand, and Defendants, on the other, regarding SIWY DENIM'S  
11 proprietary rights in the Stylized Design mark.

12 67. SIWY DENIM is the exclusive owner of the registered trademark in  
13 the Stylized Design, and has the exclusive rights and licenses to deal in commerce  
14 for its products under the Stylized Design mark.

15 68. Defendants' production, distribution, marketing and sale of the  
16 Infringing Jeans bearing SIWY DENIM's Stylized Design mark unfairly competes  
17 with Plaintiffs and has caused and will continue to cause, or, is likely to cause  
18 confusion, mistake, or to deceive, mislead, betray, and defraud consumers.

19 69. SIWY DENIM desires a judicial determination that it is the sole  
20 owner of the Stylized Design mark, and that Defendants have no right to produce,  
21 distribute, market or offer for sale the Infringing Jeans bearing a confusingly  
22 similar likeness to the Stylized Design mark.

23 70. A judicial declaration is necessary and appropriate at this time under  
24 all the circumstances so SIWY DENIM may determine and establish its rights in  
25 the Stylized Design mark.

26 ///

27 ///

28

1           71. A judicial declaration is also necessary and appropriate at this time  
2 under all the circumstances because SIWY DENIM could continue to be damaged  
3 by Defendants' infringing conduct.

4           **WHEREFORE**, Plaintiff SIWY DENIM OF AMERICA, LLC prays for  
5 judgment against Defendants, as follows:

- 6           A. For damages in an amount to be proven at trial for trademark  
7 infringement under 15 U.S.C. § 1114/Lanham Act §43(a);  
8           B. For damages in an amount to be proven at trial for false designation of  
9 origin under 15 U.S.C. §1125(a);  
10          C. For damages in an amount to be proven at trial for trademark dilution  
11 under 15 U.S.C. §1125(c);  
12          D. For damages to be proven at trial for common law unfair competition.  
13          E. For damages in an amount to be proven at trial for unfair, fraudulent and  
14 illegal business practices under *Business and Professions Code* §17200;  
15          F. For disgorgement of Defendants' profits under 15 U.S.C. §1117(a);  
16          G. For an injunction by this Court, as requested throughout the Complaint,  
17 prohibiting Defendants from engaging or continuing to engage in the  
18 unlawful, unfair, or fraudulent business acts or practices described  
19 herein;  
20          H. For an order from the Court requiring that Defendants provide complete  
21 accountings and for equitable relief, including that Defendants disgorge  
22 and return or pay their ill-gotten gains obtained from the illegal  
23 transactions entered into and or pay restitution, including the amount of  
24 monies that should have been paid if Defendants' complied with their  
25 legal obligations, or as equity requires;  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- I. For an order from the Court that an asset freeze or constructive trust be imposed over all monies and profits in Defendants' possession which rightfully belong to SIWY DENIM;
- J. For destruction of the infringing articles in Defendants' possession under 15 U.S.C. §1118;
- K. For treble damages suffered by SIWY DENIM as a result of the willful and intentional infringements and acts of counterfeiting engaged in by Defendants, under 15 U.S.C. §1117(b);
- L. For damages in an amount to be proven at trial for unjust enrichment.
- M. For SIWY DENIM's reasonable attorney's fees;
- N. For all costs of suit; and
- O. For such other and further relief as the Court may deem just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff SIWY DENIM OF AMERICA, LLC respectfully demands a trial by jury in this action.

DATED: August 22, 2008

GAREEB | PHAM, LLP

By:   
\_\_\_\_\_  
Christopher Q. Pham, Esq.  
Sumithra Rao, Esq.  
Attorneys for Plaintiff  
SIWY DENIM OF AMERICA, LLC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

**TRADEMARKS FOR CLIENT/DIVISION**  
 Slivy Denim of America LLC

Wednesday, July 23, 2008

Mark Name	Country Name	Application Number	Registration Number	Publication Date
SMVY (stylized)	Canada	1337183	2/27/2007	4/9/2008
Attorney Name	Terrance H. Link II	Docket Number	113649 0028	REG NAT Filed
Current Owner Name	Slivy Denim of America LLC	Class Number	025	Goods
Agent Name	Aird & Berlis LLP	Denims, hats, jackets; jeans; pajamas; pants; shirts; skirts; sweaters; t-shirts		
HEART POCKET DESIGN	Canada	1337177	7/14/07	2/6/2008
Attorney Name	Terrance H. Link II	Docket Number	113649 0029	REG NAT Registered
Current Owner Name	Slivy Denim of America LLC	Class Number	025	Goods
Agent Name	Aird & Berlis LLP	Denims; hats; jackets; jeans; pajamas; pants; shirts; skirts; sweaters; t-shirts		
SMVY (typed)	Canada	1337178	2/27/2007	4/16/2008
Attorney Name	Terrance H. Link II	Docket Number	113549 0027	REG NAT Filed
Current Owner Name	Slivy Denim of America LLC	Class Number	025	Goods
Agent Name	Aird & Berlis LLP	Denims; hats; jackets; jeans; pajamas; pants; shirts; skirts; sweaters; t-shirts		

**TRADEMARKS FOR CLIENT/DIVISION**

Wednesday, July 23, 2008

Sivvy Denim of America LLC

<i>MarkName</i>	<i>ApplicationNumber</i>	<i>RegistrationNumber</i>	<i>PublicationDate</i>
<i>CountryName</i>	<i>ApplicationDate</i>	<i>RegistrationDate</i>	<i>ExpirationDate</i>
TULIP-ROCKET DEVICE China P R	5148902 2/6/2006		
<i>AttorneyName</i> Terence H Link II <i>CurrentOwner</i> Sivvy Denim of America LLC <i>AgentName</i>	<i>DocketNumber</i> 113649-0007	REG NAT	Filed
	<i>ClassNumber</i> 025 <i>ClassType</i> Goods		
SIVVY (stylized) China P R	5149503 2/6/2006		
<i>AttorneyName</i> Terence H Link II <i>CurrentOwner</i> Sivvy Denim of America LLC <i>AgentName</i>	<i>DocketNumber</i> 113649-0012-CN	REG NAT	Filed
	<i>ClassNumber</i> 025 <i>ClassType</i> Goods		
	Denims; hats; jackets; jeans; pajamas; pants; shirts; skirts; sweaters; T-shirts		
SIVVY (w/pead) China P R	5149504 2/6/2006		
<i>AttorneyName</i> Terence H Link II <i>CurrentOwner</i> Sivvy Denim of America LLC <i>AgentName</i>	<i>DocketNumber</i> 113649-0008	REG NAT	Filed
	<i>ClassNumber</i> 025 <i>ClassType</i> Goods		
	Denims; hats; jackets; jeans; pajamas; pants; shirts; skirts; sweaters; T-shirts		

**TRADEMARKS FOR CLIENT/DIVISION**  
 Siwy Denim of America LLC

Wednesday, July 23, 2008

MarkName	CountryName	ApplicationNumber	RegistrationNumber	PublicationDate
POCKET DESIGN		004 840 922	004 840 922	7/17/2006
Community Trademark		11772006	12/16/2005	1/17/2016
AttorneyName	Terence H. Link II	DocketNumber	113649 0008	REG C Registered
CurrentOwner	Siwy Denim of America LLC	ClassNumber	025	Goods
AgentName				clothing, namely women's, men's, juniors and children's denim, shorts, skirts, jeans, pants, tee shirts, blouses, sweaters, shirts, cardigans, pajamas, overalls, capri pants, sweatshirts, skirts, hats, caps, gloves, scarves, shoes coats, jackets, pullovers, rompers, bodysuits, undergarments
SIWY		004 841 251		7/24/2006
Community Trademark		11772006		
AttorneyName	Terence H. Link II	DocketNumber	113649 0005	REG C Filed
CurrentOwner	Siwy Denim of America LLC	ClassNumber	025	Goods
AgentName	Lucas & Co.			clothing, namely women's, men's, juniors and children's denim, shorts, skirts, jeans, pants, tee shirts, blouses, sweaters, shirts, cardigans, pajamas, overalls, capri pants, sweatshirts, skirts, hats, caps, gloves, scarves, shoes coats, jackets, pullovers, rompers, bodysuits, undergarments
SIWY (typed)		2006-015842	4881713	
Japan		22232006	01/25/2006	9/25/2016
AttorneyName	Terence H. Link II	DocketNumber	113649 0013	REG NAT Registered
CurrentOwner	Siwy Denim of America LLC	ClassNumber	025	Goods
AgentName				Denims; hats; jackets; jeans; pajamas; pants; shirts; skirts; sweaters; t-shirts

Trademarks by Client/Division

Page 3 of 8

MDC IPMuser



**TRADEMARKS FOR CLIENT/DIVISION**

Wednesday, July 23, 2008

Siwuy Denim of America LLC

Mark Name	Country Name	Application Number	Registration Number	Publication Date
HEART POCKET DESIGN	South Korea	40-2007-11834	745173	4/30/2018
Attorney Name	Terrence H. Link II	11/23/2006	4/30/2008	
Current Owner	Siwuy Denim of America LLC	Docket Number	113649-0023	REG NAT Registered
Agent Name	Kim & Chang	Class Number	025	Goods
SIWY (alyhaeud)	Taiwan	0959062256	1241892	12/16/2016
Attorney Name	Terrence H. Link II	2/10/2006	12/16/2006	
Current Owner	Siwuy Denim of America LLC	Docket Number	113649-0017	REG NAT Registered
Agent Name	TIPLO	Class Number	025	Goods
HEART POCKET DESIGN	Taiwan	095906262	1241894	12/16/2016
Attorney Name	Terrence H. Link II	2/10/2006	12/16/2006	
Current Owner	Siwuy Denim of America LLC	Docket Number	113648-0019	REG NAT Registered
Agent Name	TIPLO	Class Number	025	Goods

Denims; hats; jackets; jeans; pajamas; pants; shirts; skirts; sweaters; t-shirts  
 Clothing, namely, denim jeans, shorts, skirts, tee shirts, blouses, sweaters, shirts, cardigans, pajamas, overalls, capri pants, sweatshirts, hats, caps, gloves for clothing and against cold, scarves, shoes, coats, jackets, pullovers, rompers, bodysuits, undergarments

**TRADEMARKS FOR CLIENT/DIVISION**

Wednesday, July 23, 2008

Sivvy Denim of America LLC

Mark Name	Country Name	Application Number	Registration Number	Publication Date
SIWY (typed)		085006257	1241893	
Towels		21022005	121622006	12/15/2018
Attorney Name	Terrence H. Link II			
Current Owner	Sivvy Denim of America LLC	Docket Number	113549.0015	REG NAT Registered
Agent Name	TIPLO	Class Number	026	Class Type Goods
				Denims; hats; jackets; jeans; pajamas; pants; shirts; skirts; sweaters; t-shirts
POCKET DESIGN MARK (current)	United States	78/804,714	3,170,714	8/29/2006
Attorney Name	Terrence H. Link II	4/8/2005	1/14/2006	11/14/2018
Current Owner	Sivvy Denim of America LLC	Docket Number	113549.0003	REG NAT Registered
Agent Name		Class Number	025	Class Type Goods
				Clothing, namely, women's, men's, juniors and children's denim, shorts, skirts, jeans, pants, tee shirts, blouses, sweaters, shirts, cardigans, pajamas, overalls, capri pants, sweatshirts, skirts, hats, caps, gloves, scarves, shoes, coats, jackets, pullovers, rompers, bodysuits, undergarments.
POCKET DESIGN MARK (proposed)	United States	78/807,927		
Attorney Name	Terrence H. Link II	4/13/2005		
Current Owner	Sivvy Denim of America LLC	Docket Number	113549.0002	Z NAT Inactive
Agent Name		Class Number	025	Class Type Goods
				Clothing, namely, women's, men's, juniors and children's denim, shorts, skirts, jeans, pants, tee shirts, blouses, sweaters, shirts, cardigans, pajamas, overalls, capri pants, sweatshirts, skirts, hats, caps, gloves, scarves, shoes, coats, jackets, pullovers, rompers, bodysuits, undergarments.

**TRADEMARKS FOR CLIENT/DIVISION**

Wednesday, July 23, 2008

Siwy Denim of America LLC

Mark Name	Country Name	Application Number	Registration Number	Publication Date
S SIWY & design	United States	78479,213	962004	
Attorney Name	Terrance H. Link II	Docket Number	113649,0004	REG NAT Inactive
Client/Owner Name	Siwy Denim of America LLC	Class Number	025	Goods
Agent Name				clothing, namely women's, men's, juniors and children's denim, shirts, skirts, jeans, pants, tea shirts, blouses, sweaters, shirts, cardigans, pajamas, overalls, capri pants, sweatshirts, skirts, hats, caps, gloves, scarves, shoes coats, jackets, puffers, rompers, bodysuits, undergarments
SIWY (stylized)	United States	78797,768	3,267,811	5/8/2007
Attorney Name	Terrance H. Link II	Docket Number	11242006	7/24/2007
Client/Owner Name	Siwy Denim of America LLC	Class Number	025	Goods
Agent Name				Denime, hats, jackets, jeans, pajamas, pants, shirts, skirts, sweaters, t-shirts
SIWY (typed)	United States	78797,716	3,267,810	5/8/2007
Attorney Name	Terrance H. Link II	Docket Number	11242008	7/24/2007
Client/Owner Name	Siwy Denim of America LLC	Class Number	025	Goods
Agent Name				Denims, hats, jackets, jeans, pajamas, pants, smits, skirts, sweaters, t-shirts

# TRADEMARKS FOR CLIENT/DIVISION

Wednesday, July 23, 2008

Slwy Denim of America LLC

MarkName	ApplicationNumber	RegistrationNumber	PublicationDate
CountryName	ApplicationDate	RegistrationDate	ExpirationDate
Criteria (ClientName) in (Slwy Denim of America LLC)			
Order by Client then	CountryName		
Record Count	21		

**EXHIBIT B**

Link, Terry

---

From: Link, Terry  
Sent: Thursday, January 11, 2007 3:50 PM  
To: 'jkapor@buchalter.com'  
Subject: Charlotte Russe/Siwy Denim TM matter

Dear Mr. Kapor

I am in receipt of your letter dated January 8, 2007. Per your request please find attached a photo of the back pocket of a pair of Charlotte Russe jeans. Siwy Denim has seen these particular jeans offered for sale in Charlotte Russe stores in New York and Ohio and believes that they are being sold throughout the U.S. As stated in my previous letter the design mark on these jeans infringes Siwy Denim's trademark rights. Please provide your response by Wednesday, January 17th. Thank you.

Regards,

Terry Link

**Terrence H. Link II**

Attorney At Law

ROETZEL & ANDRESS, L.P.A.

222 South Main Street

Akron, Ohio 44308

main telephone: (330) 376-2700

direct dial telephone: (330) 849-6755

facsimile: (330) 376-4577

Debby Kaludy, Assistant: (330) 376-2700 (x5523)

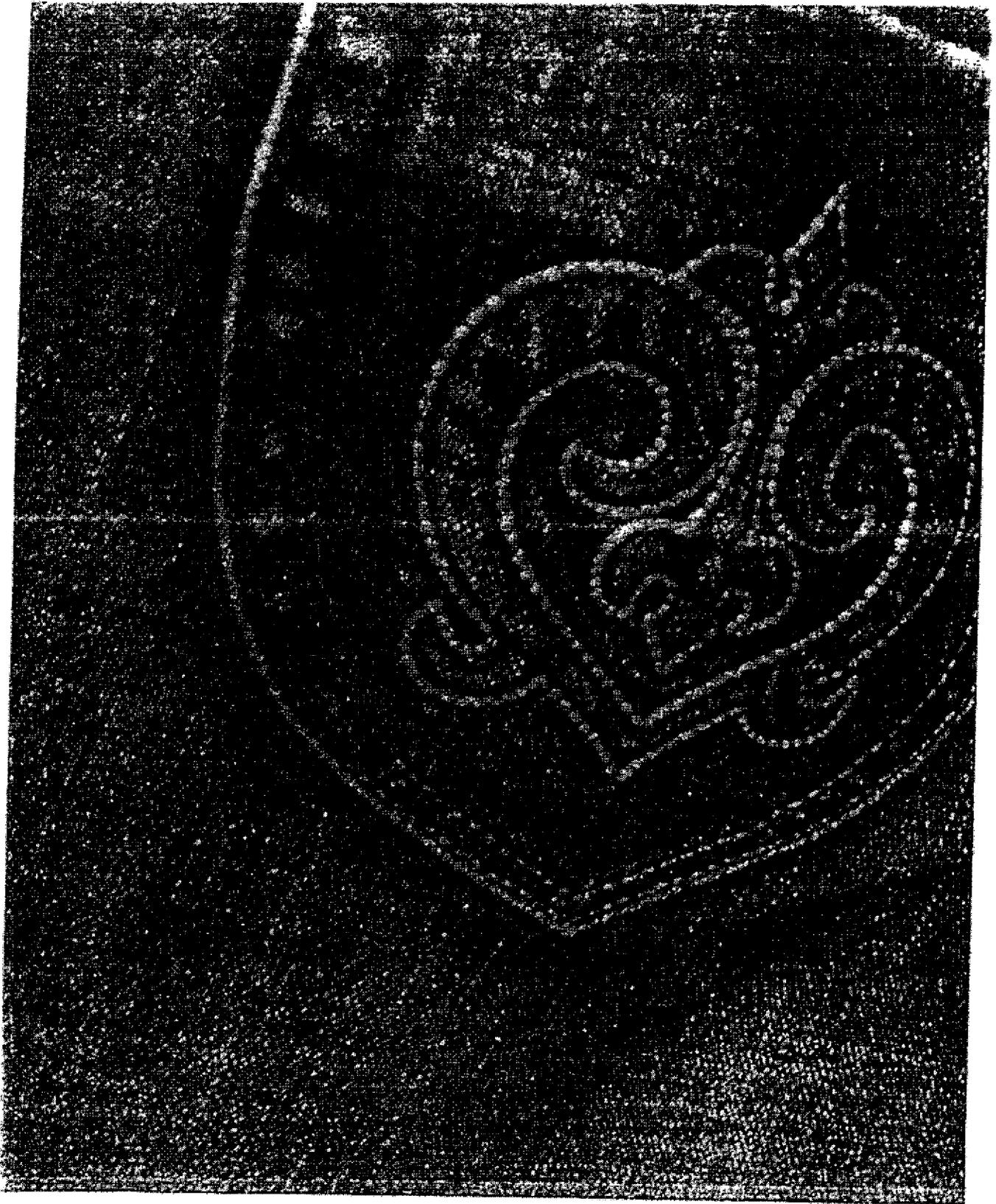
www.ralaw.com

Akron - Cincinnati - Cleveland - Columbus - Toledo - Washington, D.C. - Tallahassee - Fort Myers - Naples - Orlando

To ensure compliance with requirements imposed upon us by the IRS, we must inform you that any federal U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used and cannot be used for the purpose of (a) avoiding any penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any matter or transaction addressed herein.

Both Terrence H. Link II and Roetzel & Andress intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Terrence H. Link II immediately at (330) 849-6755. Thank you.

1/11/2007





**EXHIBIT C**



222 SOUTH MAIN  
AKRON, OH 44308  
330.849.6755 DIRECT  
330.376.2700 MAIN  
330.376.4577 FAX  
dink@ralaw.com

**Certified Article Number**  
7160 3901 9844 2468 2169  
**SENDER'S RECORD**

December 19, 2006

**VIA CERTIFIED MAIL**  
Charlotte Russe, Inc.  
4645 Morena Blvd.  
San Diego, CA 92117  
Attention: Legal Department

Re: Siwy Denim of America, LLC

Dear Sir or Madam:

We are intellectual property counsel for Siwy Denim of America, LLC ("Siwy").

As you may know, Siwy owns substantial, common law and federal intellectual property rights in the logo shown on the enclosed certificate of registration for U.S. trademark registration no. 3,170,714 ("Siwy Logo"). The Siwy Logo has become a well-known trademark in the apparel industry, as evidenced by numerous articles and other media attention recognizing the Siwy Logo as an indicator of source. Siwy currently has several U.S. and international trademark registrations and/or applications covering the Siwy Logo.

Our client has recently learned of your use of a design on the back pocket of your jeans which is confusingly similar to the Siwy Logo. Charlotte Russe is not an authorized retailer of Siwy clothing. Your use of a mark which is confusingly similar to the Siwy Logo suggests an affiliation with or endorsement by Siwy when no such relationship exists. Your use of this mark will likely cause, and probably already has caused, consumer confusion. By using this mark you are trying to trade on the goodwill which would exist if you were a part of or affiliated with Siwy. Your conduct constitutes actionable trademark infringement and unfair competition under 15 U.S.C. §1114, unfair competition under 15 U.S.C. §1125 and violates various deceptive state business practices laws.

Siwy prefers an amicable resolution and requests that Charlotte Russe:

- immediately cease and desist its use of its mark or of any word, term, symbol, design or device or any combination thereof which is likely to cause confusion, mistake or deceive as to affiliation, or endorsement.

TOLEDO AKRON COLUMBUS CINCINNATI WASHINGTON D.C.

December 19, 2008.

- identify all sales and distribution of all clothing using its confusingly similar design, including via the Internet.

Please provide your response within fourteen (14) days of this letter. The demands made in this letter shall not waive or prejudice any rights or remedies that our client may have in respect to the subject matter of this letter, all of which rights and remedies are expressly reserved.

Very truly yours,

ROETZEL & ANDRESS



Terrence H. Link II

Enclosure

THL:dk

December 19, 2006

bcc: Sandra Adamo  
Michelle Siwy  
Mark C. Terzoia, Esq.

**EXHIBIT D**

**BuchalterNemer**  
A Professional Law Corporation

1000 WILSHIRE BOULEVARD, SUITE 1500, LOS ANGELES, CALIFORNIA 90017-2457  
TELEPHONE (213) 891-0700; FAX (213) 891-0400

File Number: C2515-0001  
Direct Dial Number: (213) 891-5003  
Direct Facsimile Number: (213) 630-5663  
E-Mail Address: [jkapor@buchalter.com](mailto:jkapor@buchalter.com)

January 8, 2007

VIA FACSIMILE AND FIRST CLASS MAIL

Terrence H. Link II  
Roetzel & Andress  
222 South Main Street  
Akron, OH 44308

Re: Charlotte Russe Holding, Inc.

Dear Mr. Link:

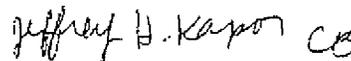
We are counsel for Charlotte Russe Holding, Inc. We are writing in response to your letter of December 19, 2006.

At the outset, it should be noted that it is our client's policy to respect the intellectual property rights of others. However, as a large retailer selling thousands of different products, we cannot be placed in the position of determining the merits of intellectual property disputes between competing resources and suppliers. It is precisely for this reason that our orders for merchandise, as well as applicable commercial law, require that our resources defend, indemnify, and hold our client harmless for claims of this nature. After being placed on notice of this type of claim, it is our policy to contact the vendor of the item and demand that the vendor assume its contractual and legal obligations.

We need more information from you to determine who our vendor was. We cannot make that determination from your letter. Once you get us the information, we will be able to respond to your correspondence.

Very truly yours,

BUCHALTER, NEMER, FIELDS & YOUNGER  
A Professional Corporation

  
JEFFREY H. KAPOR

JHK:cb

cc: Zina Rabinovich/Charlotte Russe Holding, Inc.

**EXHIBIT E**



222 SOUTH MAIN STREET  
AKRON, OH 44308  
330 849 6755 DIRECT  
330 376 2700 MAIN  
330 376 4577 FAX  
dink@ralaw.com

May 17, 2007

VIA FACSIMILE (323) 266-3140  
and REGULAR U.S. MAIL

Allen Cho  
Blue Ambrosia  
2881 E Pico Blvd  
Los Angeles, CA 90023  
(323) 266-3141

and

VIA FACSIMILE (213) 630-5663  
and REGULAR U.S. MAIL

Jeffrey H. Kapor  
Buchalter Nemer  
1000 Wilshire Boulevard  
Suite 1500  
Los Angeles, California 90017-2457

Re: Siwy Denim of America, LLC - Heart Pocket Design

Gentlemen:

Pursuant to my recent telephone conversation with Mr. Cho I further discussed this matter with Siwy Denim. It maintains its request for the name and contact information of Blue Ambrosia's vendor that provided the design to or made the jeans for Blue Ambrosia. In addition, it also maintains its request for the sales price of the 8,000 pairs of jeans sold to Charlotte Russe and delivered to its distribution center in Ontario, California in the fall of 2006. Finally, it requests sales information relating to the retail sale of such jeans by Charlotte Russe.

Please provide this information no later than May 31, 2007. The demands made in this letter shall not waive or prejudice any rights or remedies that Siwy Denim may have in respect to the subject matter of this letter, all of which rights and remedies are expressly reserved.

May 17, 2007  
Page 2

Thank you for your anticipated cooperation.

Very truly yours,

ROETZEL & ANDRESS  
A Legal Professional Association



Terrence H. Link II

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

**CV08- 5545 SJO (AGRx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

(a) PLAINTIFFS (Check box if you are representing yourself) <input type="checkbox"/> SIWY DENIM OF AMERICA, L.L.C., an Ohio Limited Liability Company	DEFENDANTS CHARLOTTE RUSSE HOLDING, INC., a Delaware Corporation, BLUE AMBROSIA, INC., a California Corporation and Does 1-10
----------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Christopher Q. Pham, Bar No. 206697, Sumithra Rao, Bar No. 256078 GARIBOLDI PHAM, LLP 707 Wilshire Blvd., Ste. 5300, Los Angeles, CA 90017 Tel: (213) 455-2930 Fax: (213) 455-2940	Attorneys (If Known)
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------

II. BASIS OF JURISDICTION (Place an X in one box only)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)																
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>		PTF DEF		PTF DEF	Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
	PTF DEF		PTF DEF														
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4 <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only)

1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify): \_\_\_\_\_  
  6 Multi-District Litigation  
  7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT JURY DEMAND:  Yes  No (Check 'Yes' only if demanded in complaint)

CLASS ACTION under F.R.C.P. 23:  Yes  No      MONEY DEMANDED IN COMPLAINT: \$ \_\_\_\_\_

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 15 U.S.C. Section 1114, 15 U.S.C. Section 1125(a) and (c)

VII. NATURE OF SUIT (Place an X in one box only)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 499 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence/Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

CV08-05545

FOR OFFICE USE ONLY: Case Number \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

FROM: JANNLEY & JANNLEY COUHI SERVICES 4138024 08/22/2008 14:26 0023 P. 002/002

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes  
If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

- (check all boxes that apply):
- A. Arise from the same or closely related transactions, happenings, or events; or
  - B. Call for determination of the same or substantially related or similar questions of law and fact; or
  - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
  - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:	California County outside of this District; State, if other than California; or Foreign Country
	OHIO

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:	California County outside of this District; State, if other than California; or Foreign Country
CHARLOTTE RUSSE HOLDING, INC.: San Diego County BLUE ANDROSIA, INC.: Los Angeles County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties  
Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date August 22, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1. It is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HEA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1395ff(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (b))

# **EXHIBIT 2**

1 Mark D. Brutzkus - Bar No. 128102  
2 Todd M. Lander - Bar No. 173031  
3 EZRA BRUTZKUS GUBNER LLP  
4 21650 Oxnard Street, Suite 500  
5 Woodland Hills, CA 91367  
6 Telephone: 818.827.9000  
7 Facsimile: 818.827.9099  
8 Email: mbrutzkus@ebg-law.com  
9 tlander@ebg-law.com

10 Attorneys for Defendant  
11 BLUE AMBROSIA, INC.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 SIWY DENIM OF AMERICA, LLC,

15 Plaintiff.

16 v.

17 CHARLOTTE RUSSE HOLDINGS,  
18 INC., a Delaware corporation; BLUE  
19 AMBROSIA, INC., a California  
20 corporation and DOES 1 - 10,

21 Defendants.

Case No. CV08-5545 SJO (AGRx)

Assigned to Honorable S. James Otero

**DEFENDANT BLUE AMBROSIA,  
INC.'S ANSWER TO COMPLAINT**

22 Defendant Blue Ambrosia, Inc. ("Blue Ambrosia"), answers the allegations  
23 in the Complaint of plaintiff Siwy Denim of America, LLC ("SIWY") as follows:

**JURISDICTIONAL ALLEGATION**

24 1. Answering paragraph number one, Blue Ambrosia lacks sufficient  
25 information and belief to admit or deny the allegations in this paragraph, and on  
26 that basis denies them.

27 ///

28 ///



**INJURY TO PLAINTIFFS**

1  
2 11. Answering paragraph number eleven, Blue Ambrosia lacks sufficient  
3 information and belief to admit or deny the allegations in this paragraph, and on  
4 that basis denies them.

5 12. Answering paragraph number twelve, Blue Ambrosia lacks sufficient  
6 information and belief to admit or deny the allegations in this paragraph, and on  
7 that basis denies them.

8 13. Answering paragraph number thirteen, Blue Ambrosia lacks sufficient  
9 information and belief to admit or deny the allegations in this paragraph, and on  
10 that basis denies them.

11 14. Answering paragraph number fourteen, Blue Ambrosia lacks  
12 sufficient information and belief to admit or deny the allegations in this paragraph,  
13 and on that basis denies them.

14 15. Answering paragraph number fifteen, Blue Ambrosia lacks sufficient  
15 information and belief to admit or deny the allegations in this paragraph, and on  
16 that basis denies them.

17 16. Answering paragraph number sixteen, Blue Ambrosia lacks sufficient  
18 information and belief to admit or deny the allegations in this paragraph, and on  
19 that basis denies them.

20 17. Answering paragraph number sixteen, Blue Ambrosia lacks sufficient  
21 information and belief to admit or deny the allegations in this paragraph, and on  
22 that basis denies them.

23 18. Answering paragraph number eighteen, Blue Ambrosia denies the  
24 allegations in this paragraph.

25 19. Answering paragraph number nineteen, Blue Ambrosia denies the  
26 allegations in this paragraph.

27 20. Answering paragraph number twenty, Blue Ambrosia denies the  
28 allegations in this paragraph.



1 30. Answering paragraph number thirty, Blue Ambrosia denies the  
2 allegations in this paragraph.

3 31. Answering paragraph number thirty-one, Blue Ambrosia denies the  
4 allegations in this paragraph.

5 32. Answering paragraph number thirty-two, Blue Ambrosia denies the  
6 allegations in this paragraph.

7 33. Answering paragraph number thirty-three, Blue Ambrosia denies the  
8 allegations in this paragraph.

9 **SECOND CAUSE OF ACTION**

10 34. Answering paragraph number thirty-four, Blue Ambrosia re-asserts  
11 the admissions and denials in paragraphs one through thirty-three, as though fully  
12 set forth in this paragraph.

13 35. Answering paragraph number thirty-five, Blue Ambrosia lacks  
14 sufficient information and belief to admit or deny the allegations in this paragraph,  
15 and on that basis denies them.

16 36. Answering paragraph number thirty-six, Blue Ambrosia denies the  
17 allegations in this paragraph.

18 37. Answering paragraph number thirty-seven, Blue Ambrosia denies the  
19 allegations in this paragraph.

20 38. Answering paragraph number thirty-eight, Blue Ambrosia denies the  
21 allegations in this paragraph.

22 39. Answering paragraph number thirty-nine, Blue Ambrosia denies the  
23 allegations in this paragraph.

24 40. Answering paragraph number four, Blue Ambrosia denies the  
25 allegations in this paragraph.

26 41. Answering paragraph number forty-one, Blue Ambrosia denies the  
27 allegations in this paragraph.

28 ///

1 **THIRD CAUSE OF ACTION**

2 42. Answering paragraph number forty-two, Blue Ambrosia re-asserts the  
3 admissions and denials in paragraphs one through forty-one, as though fully set  
4 forth in this paragraph.

5 43. Answering paragraph number forty-three, Blue Ambrosia denies the  
6 allegations in this paragraph.

7 44. Answering paragraph number forty-three, Blue Ambrosia denies any  
8 failure, neglect and/or default as alleged in this paragraph, and similarly denies that  
9 it engaged in any wrongful conduct that adversely affected the Plaintiff in any way.  
10 Blue Ambrosia lacks sufficient information or belief to admit or deny the  
11 remaining allegations in this paragraph, and on that basis denies them.

12 45. Answering paragraph number forty-five, Blue Ambrosia denies the  
13 allegations in this paragraph.

14 46. Answering paragraph number forty-six, Blue Ambrosia denies the  
15 allegations in this paragraph.

16 **FOURTH CAUSE OF ACTION**

17 47. Answering paragraph number forty-seven, Blue Ambrosia re-asserts  
18 the admissions and denials in paragraphs one through forty-six, as though fully set  
19 forth in this paragraph.

20 48. Answering paragraph number forty-eight, Blue Ambrosia lacks  
21 sufficient information and belief to admit or deny the allegations in this paragraph,  
22 and on that basis denies them.

23 49. Answering paragraph number forty-nine, Blue Ambrosia lacks  
24 sufficient information and belief to admit or deny the allegations in this paragraph,  
25 and on that basis denies them.

26 50. Answering paragraph number fifty, Blue Ambrosia denies the  
27 allegations in this paragraph.

28 ///

1 51. Answering paragraph number fifty-one, Blue Ambrosia denies the  
2 allegations in this paragraph.

3 52. Answering paragraph number fifty-two, Blue Ambrosia denies the  
4 allegations in this paragraph.

5 53. Answering paragraph number fifty-three, Blue Ambrosia denies the  
6 allegations in this paragraph.

7 54. Answering paragraph number fifty-four, Blue Ambrosia denies the  
8 allegations in this paragraph.

9 **FIFTH CAUSE OF ACTION**

10 55. Answering paragraph number fifty-five, Blue Ambrosia re-asserts the  
11 admissions and denials in paragraphs one through fifty-four, as though fully set  
12 forth in this paragraph.

13 56. Answering paragraph number fifty-six, Blue Ambrosia denies the  
14 allegations in this paragraph.

15 57. Answering paragraph number fifty-seven, Blue Ambrosia denies the  
16 allegations in this paragraph.

17 58. Answering paragraph number fifty-eight, Blue Ambrosia denies the  
18 allegations in this paragraph.

19 59. Answering paragraph number fifty-nine, Blue Ambrosia denies any  
20 unlawful, unfair or fraudulent business practices causing the Plaintiff any damage  
21 or harm, as alleged in this paragraph. Beyond that, Blue Ambrosia lacks sufficient  
22 information and belief to admit or deny the allegations in this paragraph, and on  
23 that basis denies them.

24 60. Answering paragraph number sixty, Blue Ambrosia denies any  
25 obtaining any ill-gotten gains from illegal transactions, as alleged in this paragraph.  
26 Beyond that, Blue Ambrosia lacks sufficient information and belief to admit or  
27 deny the allegations in this paragraph, and on that basis denies them.

28 ///





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SIXTH AFFIRMATIVE DEFENSE

77. Blue Ambrosia contends that, due to the fact that Plaintiff's marks are merely ornamental or those of a surname, any commercial use of the same terms or logos by Blue Ambrosia – though it does not admit any use – was done fairly and in good faith and in connection with the marketing or description of its own goods/services, and thus constitutes “fair use” in accordance with 15 U.S.C. Section 1115(b)(4).

SEVENTH AFFIRMATIVE DEFENSE

78. If Blue Ambrosia infringed any trademark interest allegedly held by Plaintiff, Blue Ambrosia did so with innocent intent.

EIGHTH AFFIRMATIVE DEFENSE

79. Plaintiff is barred from obtaining any relief due to its fraud, including but not limited to, committing a fraud upon the United States Patent and Trademark Office.

NINTH AFFIRMATIVE DEFENSE

80. Plaintiff is barred from recovery because Plaintiff has committed misuse of its trademark.

TENTH AFFIRMATIVE DEFENSE

81. Plaintiff's conduct with regards to the matters alleged in the Complaint was such that Plaintiff is barred by the equitable doctrine of unclean hands from obtaining the relief requested against the Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

82. Some or all of the damages alleged by Plaintiff, if any, is to be offset by the damage sustained by Defendant as a result of Plaintiff's conduct.

TWELFTH AFFIRMATIVE DEFENSE

83. Plaintiff is not entitled to statutory damages under the law.

///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THIRTEENTH AFFIRMATIVE DEFENSE

84. Blue Ambrosia denies that it is responsible or liable in any way for the damages or loss alleged in the Complaint. However, if it is found to be liable or responsible for any or all of the alleged damages or loss, Blue Ambrosia alleges that its, if any, is not the sole proximate cause of the damage or loss, that the damage awarded to Plaintiff, if any, should be apportioned according to California state law by each parties' respective fault and legal responsibility of all parties, persons and entities, and their agents, servants, and employees who contributed to and/or cause such damages or loss according to the proof presented at the time of trial.

FOURTEENTH AFFIRMATIVE DEFENSE

85. At all times, Blue Ambrosia acted in a commercially reasonable and lawful manner. Each and every act or statement done or made by Blue Ambrosia was a good faith assertion of its rights and, therefore, was privileged and justified.

FIFTEENTH AFFIRMATIVE DEFENSE

86. Plaintiff failed to protect and/or enforce its alleged rights, and/or engaged in conduct and activities sufficient to constitute a waiver of any alleged breach of duty, negligent act, omission, or any other conduct, if any, as set forth in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

87. Plaintiff waited an unreasonable period of time before asserting its claims, if any, against Blue Ambrosia, and it is barred from asserting such claims under the doctrine of laches.

NINETEENTH AFFIRMATIVE DEFENSE

88. Plaintiff, though under an affirmative duty to do so, failed and neglected to mitigate its alleged damages, if any, and cannot recover against Blue Ambrosia, whether as alleged of otherwise.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TWENTIETH AFFIRMATIVE DEFENSE

89. The damages suffered by Plaintiff, if any, were the direct and proximate result of the acts, omission, or negligence of persons or entities other than Blue Ambrosia.

TWENTY-FIRST AFFIRMATIVE DEFENSE

90. Blue Ambrosia presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defense available. Blue Ambrosia reserves the right to assert additional defenses, including but not limited to, res judicata and collateral estoppel, in the event that the discovery indicates that they would be appropriate.

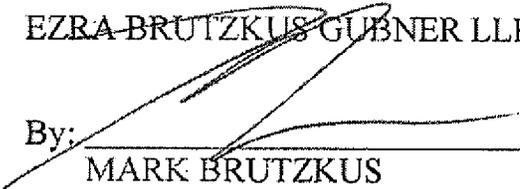
PRAYOR FOR RELIEF

WHEREFORE, on the Plaintiff's Complaint, Blue Ambrosia prays against the Plaintiff that:

- 1. The Plaintiff take nothing by way of this action;
- 2. That Blue Ambrosia recover its costs and attorneys' fees incurred in this matter; and
- 3. That Blue Ambrosia be granted such other and further relief as the Court deems just and proper.

Dated: September 29, 2008

~~EZRA BRUTZKUS GUBNER LLP~~

By:   
MARK BRUTZKUS  
TODD LANDER  
Attorneys for Defendant  
BLUE AMBROSIA, INC.

# **EXHIBIT 3**

1 Mark D. Brutzkus - Bar No. 128102  
2 Todd M. Lander - Bar No. 173031  
3 EZRA BRUTZKUS GUBNER LLP  
4 21650 Oxnard Street, Suite 500  
5 Woodland Hills, CA 91367  
6 Telephone: 818.827.9000  
7 Facsimile: 818.827.9099  
8 Email: mbrutzkus@ebg-law.com  
9 tlander@ebg-law.com

7 Attorneys for Defendant  
8 BLUE AMBROSIA

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 SIWY DENIM OF AMERICA, LLC,

12 Plaintiff.

13 v.

14 CHARLOTTE RUSSE HOLDINGS,  
15 INC., a Delaware corporation; BLUE  
16 AMBROSIA, INC., a California  
17 corporation and ROES 1 - 10,

18 Defendants.  
19  
20

Case No. CV08-5545 SJO (AGRx)

Assigned to Honorable S. James Otero

**COUNTERCLAIM OF DEFENDANT  
BLUE AMBROSIA, INC. AGAINST  
PLAINTIFF SIWY DENIM OF  
AMERICA, LLC**

21  
22 Defendant and Counterclaimant Blue Ambrosia, Inc. ("Blue Ambrosia"),  
23 alleges that:

24 1 Blue Ambrosia is a garment company based in Los Angeles,  
25 California, and is among the named defendants in this action.

26 2 Plaintiff and Counterdefendant Siwy Denim of America, LLC  
27 ("Siwy" or "Plaintiff"), is an Ohio limited liability company doing business in the  
28 state of California. Siwy has named Blue Ambrosia as a defendant in this matter,



1 7, 2005, the United States Patent and Trademark Office (“PTO”) advised Plaintiff  
2 – by way of an outgoing office action – that the logo design was being refused  
3 registration because it was ornamental in nature and would not be perceived as a  
4 mark by the purchasing public. As reflected in the PTO’s file history concerning  
5 the logo design, Plaintiff responded to the November 2005 office action on May 5,  
6 2006, and represented to the PTO that the logo design had acquired distinctiveness  
7 of the Plaintiff’s goods in commerce and attached a small number of magazine  
8 articles mentioning Plaintiff’s products. Plaintiff argued that, because of this  
9 purported distinctiveness, the logo design was entitled to registration. The PTO,  
10 acting in reliance on Plaintiff’s representations, registered the logo design on or  
11 about November 14, 2006.

12 6. In fact, Plaintiff’s representations to the PTO were false. The true  
13 facts were and are that the logo design had not, and has not, acquired  
14 distinctiveness of the Plaintiff’s products and was and remains purely an  
15 ornamental feature. It is therefore not entitled to registration.

16 7. Blue Ambrosia is informed and believes, and based on that  
17 information and belief alleges, that Plaintiff knew its representations to the PTO  
18 were false at the time they were made, and that Plaintiff made those  
19 misrepresentations with the intention of deceiving the PTO and inducing it to issue  
20 registration of the logo design.

21 8. Blue Ambrosia is further informed and believes that at the time  
22 Plaintiff made these misrepresentations and at all time the PTO issued its  
23 registration of the logo design, the PTO was ignorant of the falsity of the  
24 misrepresentation and reasonably believed them to be true. In reliance on those  
25 misrepresentations, the PTO issued the registration of the design logo.

26 9. Blue Ambrosia is additionally informed and believes that the Plaintiff  
27 acted with full knowledge and awareness that its conduct was causing and would  
28 cause – and continue to cause – the PTO to rely on its misrepresentations.



1 alleged above, and because the logo is purely ornamental in nature and thus not  
2 entitled to trademark registration.

3 15. A judicial declaration is necessary, proper, and appropriate under the  
4 circumstances in order that both Blue Ambrosia and the Plaintiff may ascertain  
5 their respective rights and duties relative to the design logo registration. The  
6 current unsettled state of affairs has interfered with, and continues to interfere with,  
7 Blue Ambrosia's efforts to continue its commercial conduct.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Blue Ambrosia prays for judgment as follows:

10 **ON THE FIRST CLAIM FOR RELIEF**

11 1. For an order that Plaintiff's design logo registration with the United  
12 States Patent and Trademark Office – U.S. Registration No. 3170714 – is cancelled  
13 and of no force and effect.

14 **ON THE SECOND CLAIM FOR RELIEF**

15 2. For a declaration that Plaintiff's design logo registration with the  
16 United States Patent and Trademark Office – U.S. Registration No. 3170714 – is  
17 invalid as a matter of law due to Plaintiff's misconduct, and because the logo is  
18 purely ornamental in nature and thus is not entitled to trademark registration.

19 **ON ALL CAUSES OF ACTION**

20 3. For Counterclaimant's reasonable attorneys' fees;  
21 4. That Counterclaimant recover its costs incurred in this matter; and  
22 5. That Counterclaimant be granted such other and further relief as the  
23 Court deems just and proper.

24 Dated: September 27, 2008

EZRA BRUTZKUS GUBNER LLP

25  
26 By:

MARK BRUTZKUS  
TODD LANDER

Attorneys for Defendant and Counterclaimant  
BLUE AMBROSIA, INC.

27  
28 COUNTERCLAIM